

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6140 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 and 2 Yes. Nos. 3 to 5 No.

TRIVENI HYDROMECHS PVT LTD

Versus

G S F C & ORS

Appearance:

MR AK CLERK for Petitioner
MR RD DAVE for Respondents No.1 and 2.
MR VB GARANIA for Respondents No.3 and 5.
MR MB GANDHI for Respondent No. 4

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/01/98

ORAL JUDGEMENT

Mr.A.K.Clerk has invited the attention of the Court that besides the draft amendment dated 23.6.1997 there is one more draft amendment dated 16.6.1997 seeking to implead the Industries Commissioner for the State of Gujarat as party respondent No.5. Mr.V.B.Garania, AGP is

already appearing in this matter on behalf of the State of Gujarat i.e. respondent No.3 and therefore he also appears for Industries Commissioner, State of Gujarat, impleaded as party respondent No.5 today. Service of respondent No.5 is therefore waived by Mr.Garania. Mr.A.K.Clerk may file amended cause title so that the cause title may properly show respondent No.4 as well as respondent No.5.

Pleadings in this case are complete and when the matter came up today for admission before the Court while same is pending since 1994, all the parties submitted that the matter may be finally heard and disposed of right today.

Rule.

Mr.Dave waives service for respondents No.1 and 2. Mr.V.B.Garania has waived service for respondent Nos. 3 and 5 and Mr.M.B.Gandhi has waived service for respondent No.4.

The facts of the present case depict another illustrious and glaring instance of parties taking loans and lands from the public bodies and the state government, and then neither starting production nor paying due instalments back to the bodies which have loaned the amount and thereby block the land which is meant for industrial development and thus putting a break in the industrial development of the State.

There is no dispute about the fact that a term loan of Rs.14,30,000/- was sanctioned in favour of the petitioner on 17.8.1988 by Gujarat State Financial Corporation and disbursement letter in respect of this loan amount was also issued on 2.9.1988 . Thereafter on production of necessary documents by the petitioner, the Gujarat State Financial Corporation had also advanced a sum of Rs.2,16,000/- to the petitioner on 22.12.1989 and Rs.4,49,000/- on 9.8.1990 and the petitioner has not raised any grievance about the delay for the amount which has been advanced to it as aforesaid. There is also no dispute about the factual position that a sum of Rs.2,52,660/- was then advanced to the petitioner on 6.10.1992 and Rs.1,05,000/- was advanced on 9.6.1993.

The petitioner was to put a plastic processing unit at Sarigam, G.I.D.C. estate in Valsad district. While this unit has not seen the day to start the production a grievance has been raised by the petitioner before this Court that Gujarat State Financial

Corporation had disbursed the loan of Rs. 11.23 lacs only to it as against the sanctioned loan of Rs.14,30,000/and the amount of the subsidy to the tune of Rs.3,44,000/- has also not been paid. There are lot of factual controversies about the non payment of the dues by the petitioner to the Gujarat Industrial Development Corporation and it has been pointed out by Mr. Dave appearing on behalf of the Gujarat State Financial Corporation that as on 1.5.1994 the additional amount against the petitioner company was Rs.16,92,835/- which has now increased further with the interest. Mr.Gandhi has pointed out that Gujarat Industrial Development Corporation had to recover as on March, 1995, a sum of Rs.1,92,465/- from the petitioner as on March, 1995, therefore, in the year 1995 the Gujarat Industrial Development Corporation had evicted out the petitioner from the premises which had been given by Gujarat Development Corporation as also the plant, machinery and the entire unit. While the petitioner's allegation is that he could not start the production work because the due amount of subsidy and the rest of the amount of loan etc. have not been paid to it, the case of the Gujarat State Financial Corporation is that the petitioner failed to adhere to the time schedule with regard to repayment of the due amount of instalments and similar grievance have been raised on behalf of the Gujarat State Industrial Development Corporation in respect of nonpayment of dues. Mr.V.B.Garania, AGP appearing on behalf of the Government has submitted that in view of the letter dated 28.10.1995 issued by the Industries Commissioner for the State of Gujarat to the Gujarat State Financial Corporation, District Industries Centres and Gujarat State Industrial Investment Corporation etc. any party which has not been able to start the production is not entitled to any subsidy. Starting of a project or a unit and the actual starting of the production is a sine qua non for the payment of the subsidy from the Government and in the facts of the present case when the petitioner has failed to start the production work and the unit has at all not started, there is no question of paying subsidy to the petitioner and the petitioner has no case whatsoever for getting the benefit. It has also been argued by Mr.Dave and Mr.Gandhi that when the petitioner himself had failed to adhere to the terms of loan and conditions on which it had to pay the dues to the Industrial Development Corporation, the petitioner has no case for getting the rest of the amount of the loan i.e. amount other than that which had been disbursed or to get the possession or to retain the unit. It has been submitted that besides the fact that the petitioner is not entitled to any relief in this petition

it is other way round and the respondents are entitled to recover their dues from the petitioner through its properties including the plant and machinery which was installed on the land given by the Gujarat Industrial Development Corporation to the petitioner from which he was evicted in 1995. Mr.Dave has referred to section 29 of the State Financial Corporation Act, 1951 and Mr.Gandhi has relied upon Sections 4 and 5 of the Premises (Eviction of Unauthorised Occupants) Act, 1972.

Having heard learned Counsel for both the sides and having gone through the pleadings available in this case, the Court finds that the petitioner has failed to adhere to the terms on which the land was granted to it and Mr.Clerk has not been able to point out that how much amount it had paid back to the State Financial Corporation against the amount of the loan which had been disbursed to it nor he is in a position to show that any amount has been paid by the petitioner to the Gujarat Industrial Development Corporation. The factual aspects as to for whose fault the petitioner could not start the production work cannot be adjudicated in the writ jurisdiction by this Court but one thing is certain that the petitioner is a defaulter for the purpose of repayment of the loan and also in the matter of the payment of dues to the Gujarat Industrial Development Corporation and he has also failed to adhere to the payment scheduled for the purpose of starting plastic processing unit for which substantial amount of loan had been disbursed to it. The valuable piece of land meant for industrial development and substantial amount of the loan disbursed by the Gujarat State Financial Corporation has been blocked for considerable long time for more than eight years by now and thus the wholesome purpose for which such facilities are extended to the parties has been defeated and frustrated. It has been noticed that there is a growing tendency of taking loan from the public bodies in the name of the project for industrial development for which even land is taken from the Industrial Development Corporation and thereafter neither the land is put to the correct use in time nor the money taken from the public bodies is put to the proper use for which it is meant, nay, such public bodies and corporations are dragged to the litigation by the parties taking loan and land from the corporations and public bodies and the Court finds that the petitioner's conduct in this case is no exception to this tendency which cannot be encouraged so as to defeat the object of the industrial development of the State and that too at the cost of the state exchequer. Once it is established that the petitioner has been defaulter in the repayment of

loan there is no question of issuing any writ in favour of the petitioner and against the respondent corporation and its authorities so as to restrain them from enforcing the recoveries or for quashing and setting aside the order dated 5.9.1995 or for sanctioning any additional term loan. To be more precise the petitioner is not entitled to any of the reliefs claimed by him in this petition.

Mr.A.K.Clerk has relied upon AIR 1983 SC Pg.848 i.e.The Gujarat State Financial Corporation Vs. M/s.Lotus Hotel Pvt.Ltd. The facts of the present case do not show that the corporation has backed out of its obligation. It is the admitted case of the parties that at least till 9.8.1990 by which the loan Rs.6,65,000/had been disbursed there was nothing against the Gujarat State Financial Corporation according to the petitioner itself and it is also clear in the facts of this case that the petitioner himself had not kept his promise and the petitioner is not entitled to invoke the promissory estoppel when substantial part of the amount of loan sanctioned had been disbursed to the petitioner in time and land had also been given to it.

AIR 1989 SC pg.1642 i.e. M/s.Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay has been cited by Mr.Clerk on the point that the State must act fairly to its citizens. It is found that in the present case it is other way round. Gujarat State Financial Corporation and Gujarat Industrial Development Corporation may ofcourse say that the petitioner has not been fair to them. I fail to understand as to how the petitioner can make a grievance against the aforesaid corporations that they have not been fair to it. The Gujarat Industrial Development Corporation has given land to the petitioner and the Gujarat State Financial Corporation, has not only sanctioned the loan but has also disbursed the major and substantial part of the loan to the petitioner without any lapse on its part and therefore this decision in M/s.Dwarkadas Marfatia (Supra) is of no avail to the petitioner.

There is no merit in this Special Civil Application, the same is hereby dismissed. Rule is hereby discharged.

m.m.bhatt